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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

17 Cr. 630 (ER)

6 MARK SCOTT,

7 Conference

8 Defendant.  
9 -----x  
10

11 New York, N.Y.  
12 September 13, 2018  
13 10:30 a.m.

14 Before:

15 HON. EDGARDO RAMOS,

16 District Judge

17 APPEARANCES

18 GEOFFREY S. BERMAN  
19 United States Attorney for the  
20 Southern District of New York

TIMOTHY HOWARD  
Assistant United States Attorney

JULIETA V. LOZANO  
Special Assistant United States Attorney

COVINGTON & BURLING LLP  
Attorneys for Defendant  
BY: ARLO DEVLIN-BROWN

ALSO PRESENT: RON SHIMKO, FBI Agent

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1 (Case called)

2 MS. LOZANO: Good morning, your Honor. Special  
3 Assistant U.S. Attorney Julieta Lozano.

4 MR. HOWARD: AUSA Timothy Howard.

5 MR. SHIMKO: And Ron Shimko with the FBI.

6 THE COURT: Good morning. You can be seated.

7 MR. DEVLIN-BROWN: Good morning, your Honor. Arlo  
8 Devlin-Brown of Covington and Burling, for Mark Scott. We  
9 appeared in magistrate's court and will file a notice of  
10 appearance today. We've been engaged to handle bail and  
11 release and preliminary proceedings and have every hope and  
12 expectation of being able to represent Mr. Scott all the way  
13 through. As you know, this is a case where accounts were  
14 seized, so we have to sort that out, but we'll let the Court  
15 know in short order if there's any issue with that.

16 THE COURT: I take it, Mr. Scott, you have no  
17 objection to my proceeding this morning with Mr. Devlin-Brown  
18 representing you?

19 THE DEFENDANT: No objection, your Honor.

20 THE COURT: This matter is on for an initial  
21 conference. I guess it's in a bail appeal. Let me start with  
22 the government. Tell me a little bit about this case.

23 MS. LOZANO: Yes, your Honor. The defendant is  
24 charged with participating a vast money laundering conspiracy  
25 that lasted between 2016 and 2018. He engaged with his

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1 coconspirators and he laundered approximately \$400 million of  
2 proceeds of a fraudulent cryptocurrency. This fraud scheme was  
3 international in scope and brought in approximately \$4 billion  
4 worldwide from victims.

5 The defendant's role in this scheme was he's a  
6 licensed attorney, and he joined the coconspirators and formed  
7 hedge funds, international hedge funds, with accounts in the  
8 Cayman Islands as well as Ireland. And through those hedge  
9 funds, he laundered the proceeds of the cryptocurrency fraud  
10 scheme.

11 THE COURT: Can I just ask a question about that. Is  
12 that cryptocurrency fraud scheme in the nature of a pump and  
13 dump or Ponzi, or do you know?

14 MS. LOZANO: It is hybrid Ponzi pyramid scheme. It is  
15 a fraudulent cryptocurrency that does not have, as far as the  
16 investigation has determined, a true blockchain, and most  
17 investors have not been able to recoup or take their money out  
18 of the scheme once they invest in these coins. There is some  
19 degree of Ponzi scheme here simply because there are  
20 commissions paid to promoters and recruiters in order to bring  
21 in more victims.

22 THE COURT: OK.

23 MS. LOZANO: So the defendant's role was laundering  
24 these funds and sending the majority of these funds back to the  
25 founders of the scheme. In order to do that, he lied to banks,

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1 he lied to fund administrators, and he misrepresented where the  
2 funds were coming from. As we set out in our letter submission  
3 yesterday, he represented that the moneys that were coming into  
4 the hedge funds were moneys from a select group of European  
5 families and entities that were investing who he had known for  
6 many years. In fact, our investigation has revealed that the  
7 money that was coming into the hedge funds that he formed were  
8 solely the proceeds of this fraud scheme.

9 THE COURT: That's why it's money laundering.

10 MS. LOZANO: Correct.

11 THE COURT: That's the nature. OK. Go ahead.

12 MS. LOZANO: Correct. That is why he is charged under  
13 the object crimes of concealment, both domestic and  
14 international.

15 THE COURT: Tell me about that. There's one count in  
16 the indictment, correct?

17 MS. LOZANO: There is, yes.

18 THE COURT: What is the international concealment?  
19 I'm unfamiliar with those terms, domestic and international  
20 concealment, at least in the criminal context.

21 MS. LOZANO: Well, your Honor, there are two different  
22 theories. And the international is for money that was sent  
23 either from inside the United States to a place outside or vice  
24 versa --

25 THE COURT: OK.

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1 MS. LOZANO: -- versus within accounts in the United  
2 States.

3 THE COURT: OK.

4 MS. LOZANO: The defendant also transferred  
5 approximately \$15.5 million in fees for this money laundering  
6 to his own personal accounts and used that money to buy  
7 beachfront property, luxury vehicles, luxury watches.

8 THE COURT: How many personal accounts did he have, if  
9 you know?

10 MS. LOZANO: I don't have the exact number. He had  
11 multiple in terms of personal in his name. He also had many  
12 accounts in corporate names where he was the sole director and  
13 the person who controlled the account, but it was a corporate  
14 account.

15 THE COURT: With respect to the \$15 million, not that  
16 this is dispositive one way or the other, did that \$15 million  
17 go into his personal accounts or into corporate accounts?

18 MS. LOZANO: Both.

19 THE COURT: OK.

20 MS. LOZANO: Both. And in connection with Mr. Scott's  
21 arrest, we also seized approximately and restrained  
22 approximately 25 international and domestic accounts over which  
23 he had control, both in a corporate name and his own personal  
24 name. We also seized a yacht and a Porsche pursuant to the  
25 seizure warrants signed by the court.

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1                   THE COURT: And these are vehicles -- they're both in  
2 his name, in Mr. Scott's name?

3                   MS. LOZANO: They are in the name -- they're  
4 registered, the car is registered in his name. However, I  
5 believe both the yacht and the Porsche are also owned by an  
6 entity, as are many of his real properties. They're owned by  
7 corporate entities, and he is the sole director of those  
8 entities.

9                   THE COURT: OK.

10                  MS. LOZANO: As a result of his conduct, the defendant  
11 was indicted by grand jury sitting in the Southern District of  
12 New York, but he was arrested in the District of Massachusetts  
13 last Wednesday, September 5. He was ordered returned to this  
14 district. He was, as the Court is aware, arraigned before  
15 Magistrate Judge Fox on Monday.

16                  Would the Court like me to give a brief overview of  
17 the discovery we have in this case at this point?

18                  THE COURT: Yes, please.

19                  MS. LOZANO: OK. We have voluminous discovery  
20 materials, which include both hard copies and voluminous  
21 electronic evidence. Those categories are broadly defined as  
22 bank and financial records, emails, fund administration  
23 records, pen register records, phone records, WhatsApp and  
24 email account records, GPS records, the cryptocurrency  
25 promotional materials, and the cryptocurrency account

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1 materials. We opened an undercover account in the  
2 cryptocurrency scheme, and so we have materials from that.

3 We have purchase invoices of purchases made by  
4 Mr. Scott. We have real estate records, corporate entity  
5 organization records. He is the director of multiple entities,  
6 both in Massachusetts and Florida as well as abroad in the  
7 Caymans. We have photos of a phone of his and information on  
8 that phone. We have FBARs that he filed with the IRS this past  
9 summer. We have a list of accounts that were seized or  
10 restrained which I have already provided to counsel. I  
11 provided that last week.

12 As I informed the Court, at the time of the arrest, we  
13 executed search warrants both at his Massachusetts residence  
14 and the Florida residence, so we have search warrant materials  
15 from both of those locations. I have already turned over to  
16 counsel copies of the actual warrants and copies of the actual  
17 seizure warrants as well. I'll get to the materials from the  
18 search warrant in a moment.

19 We also have a postarrest statement made by the  
20 defendant that was recorded. That statement has been provided  
21 to counsel in an unredacted form. And there are many privilege  
22 issues implicated by discovery in this matter because the  
23 defendant is an attorney. So from the inception of this  
24 investigation and Mr. Scott's focus -- focus on Mr. Scott, we  
25 have implemented a privilege review team. And we, during this

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1 search warrants, had a taint team conduct both searches, and we  
2 have a taint team procedure for review of all of those  
3 materials.

4 THE COURT: Are you in a position to tell me whether  
5 in connection with this investigation the government has  
6 determined that Mr. Scott at least purported to represent any  
7 coconspirators, that he was their lawyer?

8 MS. LOZANO: There is a suggestion that that may have  
9 been the case, and for that reason, the investigative team does  
10 not have all of the materials that are now in the possession of  
11 the privilege review team. That is under review by that  
12 unit --

13 THE COURT: OK.

14 MS. LOZANO: -- because there is a belief that  
15 Mr. Scott may have represented one of the coconspirators.  
16 During the search warrants -- so that is the reason that the  
17 defendant's statement has been turned over to counsel in an  
18 unredacted form, and the investigative team will only see it in  
19 its redacted form.

20 During the search warrants, we obtained hard copies of  
21 documents, corporate documents, as well as multiple electronic  
22 devices, including ESI. There is the potential of an enormous  
23 amount of data because we recovered at least 17 phones, six  
24 laptops, two iPads and three memory cards and five flash  
25 drives. We are in the process, we have already started the

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1 process with the taint teams and the investigative agencies to  
2 process, mirror that material, and to filter it through our  
3 privilege review and taint team. We will work with counsel to  
4 address privilege issues and production issues.

5 THE COURT: They were all seized last week?

6 MS. LOZANO: Correct.

7 THE COURT: So that process is just beginning?

8 MS. LOZANO: Correct, because, of course, that  
9 material had to be shipped to New York. It is all now in New  
10 York, and we are beginning the process of copying what needs to  
11 be copied so that our review teams can begin reviewing the  
12 materials.

13 Given that volume -- one moment.

14 (Counsel confer)

15 MS. LOZANO: So we will work with counsel to address  
16 the privilege issues, and we will work with the Court to the  
17 extent that protective orders may be appropriate for certain  
18 materials as well.

19 THE COURT: OK.

20 MS. LOZANO: That is, broadly speaking, the discovery  
21 material that the government has.

22 THE COURT: When do you anticipate you can begin to  
23 provide to Mr. Scott the stuff that can be easily duplicated,  
24 hard copy documents, etc.?

25 MS. LOZANO: We will be doing that on a rolling basis.

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1 We have already produced, as I noted to the Court, some  
2 materials, and we are at this point processing and copying what  
3 we can to produce to Mr. Scott. So it will be an ongoing  
4 process.

5 THE COURT: Are those materials voluminous?

6 MS. LOZANO: Yes.

7 THE COURT: OK.

8 MS. LOZANO: Yes.

9 THE COURT: Very well. Tell me about the bail issue.

10 MS. LOZANO: Well, your Honor, as set out in the  
11 letter that we filed yesterday evening, there are multiple  
12 reasons why Mr. Scott is a flight risk, and we believe that no  
13 combination of bail conditions will assure his return and  
14 appearance in court.

15 First, the significant foreign ties -- and I'm not  
16 going to repeat everything that we put in the letter --  
17 significant foreign ties. He is a German national, a dual  
18 citizen, and he has significant ties there.

19 THE COURT: What significant ties does he have there?

20 MS. LOZANO: He has a mother there, and he has  
21 traveled there over the last several years. Between two to  
22 three years, he has traveled to Germany nine times.

23 THE COURT: OK.

24 MS. LOZANO: He also has traveled to other foreign  
25 jurisdictions, including the Cayman Islands, Puerto Rico,

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1 London, Turkey. He has the ability and he has the experience  
2 that he does travel internationally. The ties in Germany are  
3 corroborated by phone records and WhatsApp records that  
4 indicate regular communication with individuals in both Germany  
5 and the UK.

6 THE COURT: What do you know about his legal practice?

7 MS. LOZANO: Our understanding, your Honor, is that up  
8 until 2016 he was a practicing lawyer, and he served in the  
9 capacity as a partner at Locke Lord for a period of time. He  
10 worked in many different law firms, but as of 2016 we can see  
11 no evidence that he worked as a lawyer, that he represented  
12 folks as his employment.

13 THE COURT: Where is he licensed, if you know?

14 MS. LOZANO: Florida.

15 THE COURT: OK.

16 MR. DEVLIN-BROWN: And New York.

17 THE COURT: He's registered in New York as well?

18 MR. DEVLIN-BROWN: Yes, he is.

19 THE COURT: In good standing?

20 MR. DEVLIN-BROWN: Yes.

21 MS. LOZANO: The second reason that -- the second  
22 point regarding his flight risk, his extensive resources. As I  
23 mentioned, we were able to seize, identify, and restrain  
24 approximately 25 accounts, both domestic and international, on  
25 the basis that those accounts had illicit funds flowing through

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1 them. It is entirely possible and it is likely that we have  
2 not identified all of his accounts, and in fact, we know that  
3 he was not fully truthful when he reported in July to the IRS  
4 the status of his foreign accounts. He identified multiple,  
5 approximately over ten foreign accounts, both in the Cayman  
6 Islands and Switzerland. All of those accounts together had  
7 approximately \$60 million in them, but he failed to identify  
8 several accounts that we know from the investigation he holds  
9 in the Bank of Ireland.

10 THE COURT: He holds in his name or in corporations?

11 MS. LOZANO: Corporations. Corporation names, yes.

12 THE COURT: For which he's the only director?

13 MS. LOZANO: Yes.

14 THE COURT: OK.

15 MS. LOZANO: And that is similar to what he reported  
16 on the FBAR were multiple accounts in corporation names where  
17 he was a director. So it's analogous, and those should have  
18 been reported, but they were not.

19 So he has evidenced the ability to withhold  
20 information about where his assets are. We are fairly  
21 confident that he has other assets that we have not identified,  
22 and they're likely significant given the amount of money that  
23 he has in the accounts we have identified. Were he to be  
24 released and not detained, he would have access to those moneys  
25 and be able to travel internationally and flee to a

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1 jurisdiction, possibly Germany, possibly another jurisdiction.  
2 There are many jurisdictions that do not have either treaties  
3 with the United States for extradition or have their own  
4 internal laws, for instance, Germany, about extradition of  
5 nationals. So there is a risk that we would not, significant  
6 risk, that we would not be able to return him to the United  
7 States.

8 He also has a strong motive to flee. As set forth in  
9 the letter yesterday, the sentence guidelines range for his  
10 conduct based on the amount of money that he laundered is so  
11 high that it exceeds the statutory maximum for the crime  
12 charged here.

13 The evidence is extremely strong and includes  
14 extensive financial tracings; his own lies, documented lies, to  
15 bank and fund administrators about the origin of the funds and  
16 the purposes of the transactions. We also have email evidence  
17 with the communication among the coconspirators about the  
18 conduct here. So the defendant has a strong motive to flee,  
19 and in fact, the defendant's coconspirators would be in a  
20 position to help him flee. And the investigation has revealed  
21 that one of the coconspirators most likely has fled to a  
22 jurisdiction where there is no extradition treaty with the  
23 United States.

24 So for those reasons, the government believes that  
25 detention is warranted because Mr. Scott poses a significant

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1 flight risk, he has the means and he has the motivation, and if  
2 he were to flee to a jurisdiction where there is no extradition  
3 treaty, we would not have an ability to bring him back and try  
4 him on these charges.

5 THE COURT: As I understand it, he's married and has  
6 one child or more than one child?

7 MS. LOZANO: As I understand it, he is married and has  
8 one child. I believe a 15-month-old.

9 THE COURT: And the wife, is she an American citizen,  
10 if you know?

11 MS. LOZANO: I do not know that.

12 MR. DEVLIN-BROWN: Yes, your Honor, she is.

13 THE COURT: OK. Thank you, Ms. Lozano.

14 Before we go to Mr. Devlin-Brown, I'll kick myself if  
15 I don't correct the record, and only because I have some  
16 personal insight into this. Puerto Rico is not a foreign  
17 jurisdiction.

18 But anyway, Mr. Devlin-Brown.

19 MR. DEVLIN-BROWN: Thank you very much, your Honor.

20 Magistrate Judge Fox heard substantially the same  
21 arguments from the government that there were no conditions  
22 that could be met in this case and rejected those. Pretrial  
23 also rejected that argument and recommended release on  
24 conditions. We got the papers, obviously, last night, shortly  
25 after 7:00. I was only able to speak to my client about them

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1       20 minutes before the conference. So we haven't had a chance,  
2 obviously, to put in a written submission, but I don't think we  
3 need to, your Honor, unless you request one. I will, though,  
4 probably spend a little more time, therefore, going through  
5 some of the arguments that the government has offered.

6                  THE COURT: Certainly.

7                  MR. DEVLIN-BROWN: So I'd like to start, actually,  
8 with strength of the case. And I know strength of the case is  
9 sometimes something defense lawyers get into at their peril,  
10 because who knows, right? It's early on. But I think in a  
11 case like this, it's actually pretty important to get into it,  
12 partly because the government's proffered it as a reason, but  
13 also everyone is presumed innocent. Everyone is presumed  
14 innocent, but when people are charged with hundreds of millions  
15 of dollars of money laundering, if their case is, well, look,  
16 we have multiple wiretaps, here's the conversation, we have  
17 three cooperators, people are presumed innocent under the law,  
18 but people sitting right here can see writing on the walls.  
19 And the risk in cases like that to flee can be much more  
20 significant. So I think we need to peel the layers back a  
21 little from what the government has said their case is based on  
22 what we know now, because it's nothing like that, your Honor,  
23 nothing at all.

24                  The government's had an opportunity to proffer the  
25 strength of their case. Usually in a case like this, a major

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1 white-collar case, there's some significant starting point that  
2 the Court can go on. There's either one of two things:  
3 There's a detailed complaint which is going to, of course, lay  
4 out some of the evidence and sources of evidence, or there's a  
5 speaking indictment. Here, the indictment is bare bones, says  
6 really nothing beyond the statutory language. So we can't take  
7 much from the charging document at all in terms of indicia of  
8 strength.

9           There's one thing, though, I think we can take from  
10 the charging document that's significant, and that's what the  
11 conspiracy is not alleged to be. He's charged with laundering  
12 funds through his private equity firm for individuals involved  
13 with some alleged cryptocurrency scam. He's not charged with  
14 conspiracy with those people to commit wire fraud or bank fraud  
15 or whatever the cryptocurrency fraud is. And based on  
16 everything I've learned from speaking with the prosecutor so  
17 far from their papers, there's no allegation that he is part of  
18 some effort to dupe people in cryptocurrency. Instead, he's  
19 charged with being the private equity person that took money  
20 that is allegedly dirty and made financial transactions with  
21 it, which is money laundering if the person in his seat, in the  
22 private equity position, knows that the money is dirty, of  
23 course.

24           So I think that frames the issue when we're thinking  
25 about the strength of the case in a case where someone's not

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1 charged with the underlying SUA or the cryptocurrency fraud.

2 We're looking at what is the evidence that this person who was  
3 moving money through a private equity firm knew that the money  
4 he was moving is dirty? That's what a case like this boils  
5 down to most significantly.

6 And what have we heard from the government on that?  
7 What has been their proffer of evidence on that? It's been  
8 extraordinarily thin, your Honor, I submit, extraordinarily  
9 thin. They lead with, in their proffer of evidence, they have  
10 bank records and financial transaction records and corporate  
11 documents, and they've traced money. It's far too early for  
12 the defense to concede anything in this case, but I seriously  
13 doubt that's what a case like this is going to rise and fall  
14 on, money moved through accounts of a private equity investor.  
15 Great. That doesn't prove too much.

16 Second, they point to communications between people in  
17 the conspiracy, and I think the quote was about the conduct  
18 here. It wouldn't surprise me if Mr. Scott is doing private  
19 equity investments for people that there might be some  
20 communications, but they haven't outlined what those  
21 communications are, your Honor. They haven't provided these  
22 emails. You can't take anything from this vague reference to  
23 communications.

24 So then they get to what I think is actually a really  
25 revealing point in terms of strength of the case. They say

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1 it's the lies to the banks. And the quote from their brief in  
2 terms of the lies to the bank is he said he had investments  
3 from a "small" -- from a "small investor group of European  
4 families the defendant had represented for many years."

5 For one thing, the defendant did meet people that he  
6 was investing in his cryptocurrency firm from Locke Lord. They  
7 were Locke Lord clients who vetted for Locke Lord and who the  
8 defendant was doing corporate deals with, as well as other  
9 people at Locke Lord. So there's actually, I think, as an  
10 aside, some truth in that statement right there, but the main  
11 point here, the government's statement that they have evidence  
12 of lies to the bank because the defendant said this money was  
13 from a small investor group of European families, that's not  
14 evidence of a lie to the bank. That's evidence of what  
15 Mr. Scott said to the bank. Evidence that it would be a lie is  
16 evidence that he knew the money was dirty, that he knew the  
17 money was something else. And they've offered nothing there,  
18 again, to show that Mr. Scott had knowledge that the money came  
19 from an illegal cryptocurrency scheme.

20 And that's a huge leap if the government wants to sort  
21 of -- we should just sort of fill that in and assume people  
22 discuss that. Because typically criminals, when they make a  
23 lot of money in their scheme and they want to, say, launder  
24 their money, let's assume that for now, when they go to a  
25 financial institution or a bank or whatever, they do not

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1 typically say: Here is my dirty money. Would you please do  
2 financial transactions with it? They say as little as they  
3 need to say to get the person handling the finances to take  
4 that on. That's a default assumption, I think, as to how  
5 criminals with dirty money work. And the government has  
6 offered no evidence, no evidence in their proffer, that  
7 Mr. Scott had some knowledge that this money was from some  
8 other source.

9 I don't want to go on and on about the evidence. It's  
10 early. You know, that there are lots of accounts, by the way,  
11 and that he made a lot of money, I mean, that's what people in  
12 private equity do, I understand. He wouldn't be the first  
13 person who made money doing private equity and bought things  
14 from it.

15 THE COURT: I don't know how private equity folks  
16 work, but is it typical, if you know, that they should create X  
17 number of different entities?

18 MR. DEVLIN-BROWN: Yes. I'm a very limited expert  
19 here, but it is typical when you have different transactions,  
20 different investments, to protect them from one and the other,  
21 that there are different entities created. And a much more  
22 simple example, your Honor, when the government mentions he has  
23 properties in the names of different companies, that's a  
24 hundred percent typical. He has a number of investments and  
25 residential real estate properties in Massachusetts which he

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1 had -- it's transparent that he's on the LLCs. He's not hiding  
2 any of that. He lives in one of them. But that's a way that  
3 people who have funds often purchase assets. It's totally  
4 common.

5 Anyway, I think I'm sure the government has answers  
6 to, you know, we have this evidence or that. They had a chance  
7 in the case where they're seeking detention under all  
8 conditions to lay out a proffer of what their evidence is, and  
9 I don't think, to get back to where I started here, your Honor,  
10 this is the sort of case where people are presumed innocent,  
11 but a defendant hearing this and seeing this says my goose is  
12 cooked. It's not. There's no evidence that this is that kind  
13 of case where someone has those kind of incentives.

14 THE COURT: There's at least the suggestion, given the  
15 amount of money that's involved -- Ms. Lozano has indicated  
16 that Mr. Scott had approximately \$400 million go through his  
17 hands -- that that is at least some evidence of his knowledge  
18 that this was not all legitimate.

19 MR. DEVLIN-BROWN: I don't find that persuasive at  
20 all, your Honor. He was a partner at a number of law firms  
21 doing international corporate work, private equity firms. You  
22 find wealthy investors. You invest for them. You earn a fee.  
23 If he has 400 million in investments, I don't think that number  
24 by itself means there's some knowledge that the money is dirty.

25 But I'll move on from the strength-of-the-case point

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1 to a related point, though, and that is the government's point  
2 about vast financial resources and the suggestion that he has  
3 the means to flee, because I actually think this argument is  
4 quite unfair. The government's done a meticulous financial  
5 investigation. They've seized 25 accounts, by their own  
6 counting at least, accounts in the U.S. They've gotten  
7 restraining orders on accounts overseas. They're going through  
8 an MLAT process. There are accounts in the U.S., by the way,  
9 they haven't seized, and of course, he has funds that predate  
10 this from his involvement in Locke Lord and other law firms.

11           But they've done this financial tracing, but then they  
12 sort of, despite being rigorous about that, sort of say: We  
13 assume there's something more. There's probably stuff we  
14 missed. It's hard to prove a negative, it really is, but let's  
15 look at the couple of examples that they've given as to why  
16 your Honor should sort of conclude there's other stuff out  
17 there that he's trying to hide.

18           The first argument, I think, is a very curious one,  
19 and that's the FBARs argument. Because they make the argument  
20 that this defendant, who's presumably trying to hide money  
21 offshore and has a consciousness of guilt and may be hiding all  
22 sorts of assets, reported, I think they said, more than ten  
23 accounts totaling more than \$60 million on his FBARs, in other  
24 words, telling the IRS he had accounts in Cayman and  
25 Switzerland and everywhere else. So then their evidence is,

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1 aha, he forgot a couple in Ireland.

2 He provided his material to accountant to prepare the  
3 FBARs. I don't know at this point what the state of those  
4 Irish accounts were, if they actually had money in them at that  
5 point, if it was a mess up. I don't know. It's too early to  
6 say that. But just looking at that argument generally that he  
7 discloses all this stuff on the FBARs from countries where it  
8 might be hard to get information from but leaves off Ireland,  
9 therefore we assume he's hiding money, it just doesn't ring as  
10 persuasive.

11 The other argument that they make in their letter, and  
12 I think this one is completely unfair as well, is they say, as  
13 the only example they give, really, of some money that they  
14 know that is out there that they have not been able to get,  
15 they say there's some bank accounts in the UAE. By the way,  
16 these accounts were moneys that his investment fund transferred  
17 funds to and are no longer under his control. They're under  
18 control of the investors. So he doesn't have access to those  
19 accounts.

20 But the government's argument is the UAE is not  
21 playing nice in the MLAT process. That's hardly a reason to --  
22 that's hardly Mr. Scott's fault, and that's hardly a reason to  
23 detain him. They haven't asked -- they haven't served a  
24 restraining order on him for the UAE accounts. They could do  
25 that. They puts some jeopardy on him if he does anything with

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1 those funds which he doesn't have access to. You could ask him  
2 to execute something, but you can't blame him for another  
3 country not playing nice with the UAE accounts. You have  
4 information about the last he knew what was in the UAE  
5 accounts. So I don't think these financial resources arguments  
6 ring true, and I fundamentally think it's unfair for the  
7 government to say there probably is stuff out there. We just  
8 don't know what it is even though we've been very thorough.

9 Now, though, I'd like to come to my final point which  
10 really links to assets as well, but it's ties to the community,  
11 because the government sort of paints a pictures of Mark Scott  
12 as an international man of mystery. He's in Bulgaria on Monday  
13 and he's in Zurich on Friday. And, yes, he traveled a lot  
14 doing his international private equity work for international  
15 clients. I'd hate to know what the government would think of  
16 me if they looked at my passport for the last two years:  
17 Argentina and then Egypt and then Zurich. I mean, it's all  
18 very, very sketchy, but my feet are planted firmly in the U.S.  
19 and so are Mr. Scott's.

20 And this German identity/nationality thing, that, I  
21 think, is the most unfair thing. He was born to a solider who  
22 was serving in Germany, and so his dad was on the Army base.  
23 He met a German woman, his mom, who's now unfortunately dying  
24 from terminal cancer in Germany. He's been in the United  
25 States his entire adult life. He want to college here. He

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1 went to law school at BU. He's been a practicing lawyer in  
2 Florida for 20 years. His entire life has been here.

3 I think it's been unfair what the government suggested  
4 with Germany. I'll give you one example. I don't hold this  
5 against Ms. Lozano, but I think it's an unfair example. They  
6 point out not only did he have a German passport, your Honor,  
7 but that he had a driver's license that they seized, right,  
8 like maybe he's about ready to get in the BMW over there and  
9 take off to the country side. The driver's license, based on  
10 what I've been able to learn so far this morning, was issued  
11 when he was 17 years old. He's 49 years old now. He collects  
12 stuff.

13 THE COURT: Was it expired?

14 MR. DEVLIN-BROWN: I don't know how long German  
15 driver's licenses last, but I will bet that it had expired. It  
16 was issued when he was 17.

17 THE COURT: OK.

18 MR. DEVLIN-BROWN: I've asked Ms. Lozano if she has  
19 that information, and she doesn't right now. But I think it's  
20 a little misleading to cite a driver's license that someone got  
21 when they were a kid that they needed, by the way -- he was  
22 still living over there as a kid -- to drive like a teenager  
23 wants to do. So I think that was unfair.

24 But more to his roots here, not only has he built a  
25 life here, he's married to a non-German national U.S. citizen.

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1 He has a 15-month-old. They're trying to have more kids. He's  
2 brought all his assets here. He's someone who's made a lot of  
3 money in the last couple of years, and what has he done with  
4 the money? He has bought real estate that's clearly traceable  
5 to him in a -- some for him some to develop into various  
6 project. He also sells a product for babies on Amazon. He has  
7 got multiple business ventures.

8 He has property in Florida. He's bought cars, which  
9 can't be easily taken out of the U.S. He has bank accounts in  
10 the U.S. This is not someone who has a foot out the door, who  
11 has some life they're building as a plan B. This is someone  
12 who's been living openly in the U.S. his entire adult life. He  
13 did some international business, but I don't think there's  
14 anything about foreign ties that suggests a desire to flee.

15 One other point about foreign ties, your Honor, about  
16 Germany in particular, there was a suggestion the prosecutor  
17 made that one of the people involved in the crypto scheme, the  
18 alleged crypto scheme, which again Mr. Scott is not accused of  
19 being part of, seems to have gone on the lam somewhere. I  
20 don't know where she's gone on the lam to, but I bet that it is  
21 not Germany because Germany is a country that has an active  
22 criminal investigation of this crypto scheme, the BaFin, the  
23 German SEC, has shut down the accounts of OneCoin, the name of  
24 the crypto company there.

25 So the idea that Mr. Scott, because he has a German

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1       passport and, of course, that old driver's license, would leave  
2       everything here and leave his suretors on the hook and go to a  
3       country that, extradition or not, is actively investigating  
4       what he would have "fled" from this court, it just doesn't add  
5       up.

6                     So, your Honor, I'll stop in just a moment. I think  
7       Judge Fox heard these arguments. Of course it's a big case.  
8       Of course it's a case where there needs to be a bond. It was a  
9       million-dollar bond secured, I think, by 200,000. We'd be fine  
10      if it was secured by 750,000. If there's something that needs  
11      to be done there, I think that's fine, but this is not, we  
12      submit, a case for detention.

13                  THE COURT: How much is his personal residence worth?

14                  MR. DEVLIN-BROWN: His personal residence in Coral  
15       Gables, Florida, is worth about 1.8 million, and he has some  
16       homes in Cape Cod as well.

17                  THE COURT: That's it?

18                  MR. DEVLIN-BROWN: That's it, unless your Honor has  
19       questions. I'll address discovery, but maybe you want to  
20       address this first.

21                  THE COURT: Let's deal with this first.

22                  Ms. Lozano, did you want to say anything else on this  
23       point?

24                  MS. LOZANO: Yes, your Honor, just briefly a few  
25       points. In response to counsel's argument regarding the

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1 strength of the case, I would note that we do have  
2 communications among Mr. Scott and the coconspirators that  
3 establish that he knew that the money that was coming into his  
4 funds were the proceeds from the cryptocurrency scheme.  
5 Notwithstanding that, he represented that it was money coming  
6 in from European family investors or from technology licensing  
7 fees.

8                 Secondly, to address counsel's point about the UAE,  
9 the only reason that we mention the transfers from Mr. Scott to  
10 the UAE is to explain that we do not have the full visibility  
11 of where all of Mr. Scott's money may have gone since we cannot  
12 get records from the UAE.

13                 And lastly, with respect to the comment about Germany  
14 having an active investigation, the fact of the matter is it  
15 has had an active investigation. No one has been arrested and  
16 no one has been charged after a lengthy investigation.

17                 THE COURT: Are any of the participants in the  
18 conspiracy in Germany so far as you know?

19                 MS. LOZANO: Yes, your Honor.

20                 THE COURT: Mr. Devlin-Brown, I saw you standing up.

21                 MR. DEVLIN-BROWN: Just one point to respond to, your  
22 Honor. To the extent your Honor is going to grant -- at this  
23 stage, where the government has in a summary fashion asserted,  
24 yes, we actually do have email action that shows the  
25 approximate date that he knew the money was dirty, if your

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1 Honor's going to base a ruling on that, I'd like to see those  
2 emails and have a chance to respond.

3 THE COURT: OK. I think that Judge Fox got it right.  
4 I don't doubt that this is a very important case, that the  
5 government sees this as an important and even a strong case,  
6 but we have in this district any number of cases involving  
7 eye-popping amounts where -- there is no violence that's  
8 involved in this particular case. So far as I know, Mr. Scott  
9 does not have any prior arrest, any criminal history  
10 whatsoever. He has strong ties to his community in Florida.  
11 And despite the fact that the amounts that are involved are  
12 fairly impressive, this is the type of case, I think, that an  
13 adequate package can be constructed.

14 Because of Mr. Scott's apparent significant assets, I  
15 do think that a million dollars and \$200,000 cash or property  
16 is low. So what I would do is increase the amount to  
17 \$2.5 million secured by \$500,000 of cash or property and two  
18 financially responsible persons to sign for him and that he not  
19 be released until those conditions are met, including the other  
20 conditions that were imposed by Magistrate Judge Fox which  
21 involve travel restriction to SDNY, EDNY, and Southern District  
22 of Florida; that he surrender his travel documents; that he be  
23 subject to pretrial supervision as directed by Pretrial  
24 Services; that he be subject to home detention with electronic  
25 monitoring; that he surrender his weapons, which -- as I

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1 understand, are all of his weapons legally owned?

2 MR. DEVLIN-BROWN: Yes, your Honor, and as I  
3 understand it from the government, they've been seized.

4 THE COURT: OK.

5 MS. LOZANO: That's correct.

6 THE COURT: So that is the opinion of the Court on the  
7 bail issue.

8 Mr. Devlin-Brown, how do you want to proceed?

9 MR. DEVLIN-BROWN: May I just, I appreciate your  
10 Honor's ruling. If I could just suggest two things to  
11 consider.

12 THE COURT: Sure.

13 MR. DEVLIN-BROWN: One, hopefully, is not  
14 controversial. And I haven't gone back to the transcript, so  
15 I'm relying on memory. But Mr. Scott also has property in Cape  
16 Cod, and I believe Judge Fox had said orally that he could  
17 travel to Cape -- to the District of Massachusetts as well.

18 THE COURT: I don't remember that from the transcript.

19 MR. DEVLIN-BROWN: No. Well, then maybe it's just my  
20 wishing, but I would request it, your Honor, and here's partly  
21 why. The circumstances of the arrest are particularly sad here  
22 because he did have a gun there, and when the agents arrested  
23 him, he had a child there. His wife was there. His wife was  
24 taken into custody because there's a gun and a child and is  
25 dealing with that matter in Massachusetts. She may not be able

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1 to travel in the near term. So I would respectfully request,  
2 we'd have to work out arrangements with pretrial, etc., but  
3 permission to travel to Massachusetts.

4 THE COURT: I'll grant that application, even over the  
5 objection of the government.

6 MR. DEVLIN-BROWN: The other thing I just ask your  
7 Honor to reconsider, and we could always come back if you're  
8 not prepared to do that now, but it's been somewhat  
9 challenging, even when we had a bond, finding people because  
10 it's something pretty unique about Mr. Scott, right, is that he  
11 until very recently was not the sort of man who had millions of  
12 dollars. He was doing fine as a lawyer. But his old friends,  
13 right, his old friends, they hear a number like 2.5 million,  
14 and it's beyond comprehension. And I don't know if the  
15 government would even, they might reject some of those people  
16 because they can't pay that. His new friends maybe could, but  
17 he doesn't know them as long.

18 So I don't know if the Court will be willing to  
19 consider reducing it to two. I would even suggest or giving us  
20 the option of securing it with more than \$500,000 because that  
21 could give people more comfort in some ways if everyone's  
22 jointly and severally responsible.

23 THE COURT: I'm happy to increase that number to  
24 \$750,000 as you previously requested.

25 MR. DEVLIN-BROWN: OK. On a 2.5?

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1           THE COURT: Yes.

2           MR. DEVLIN-BROWN: Thank you.

3           THE COURT: OK. And discovery?

4           MR. DEVLIN-BROWN: Yes, I appreciate that there's one  
5 tremendous category of discovery that's very difficult for the  
6 government. I remember being there and remember learning the  
7 lesson, be careful what you seize, because you might have to  
8 search it. So Mr. Scott apparently does save his old phones,  
9 and there will be all sorts of things we have to deal with  
10 there. I think Ms. Lozano and I can work together on figuring  
11 that out.

12           There are two things I hope we can get earlier, one  
13 thing really early, and that is the affidavits that are behind  
14 the search warrants for his property and his accounts. That  
15 should be easy. It should be a matter of asking the Court to  
16 unseal them. And it's important for two reasons: One is there  
17 could be motion practice, obviously, we can think about right  
18 away on those, can we challenge the probable cause to seize his  
19 property or home. But, second, and really this is my main  
20 motivation, in a case where you don't have a complaint, where  
21 you don't have a speaking indictment, that will at least give  
22 us some clue as to what the government's allegations really are  
23 about because, presumably, they lay out some probable cause in  
24 those documents. And it's the kind of thing that we're  
25 entitled to anyway. I'd hope we can get that within a week.

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1           Then the second category, which shouldn't again be  
2 very difficult, is all the government -- all the evidence the  
3 government had amassed to prove probable cause to get an  
4 indictment and get those moneys and properties. Presumably,  
5 they have emails that they think are incriminating readily on  
6 hand. They have bank records that they've gathered a long time  
7 ago. So that sort of stuff we would hope the government could  
8 provide, might be voluminous, but still in fairly short order.

9           THE COURT: OK. Ms. Lozano.

10          MS. LOZANO: Yes, your Honor, we should be able to  
11 promptly provide the affidavits in support of the search  
12 warrants as well as the evidence presented to the grand jury,  
13 which includes financial documents as well as emails.

14          THE COURT: When can you do that by?

15          MS. LOZANO: Well, the bulk of discovery we're  
16 requesting and believe we can provide in four weeks. We will  
17 prioritize those two items and put them at the top of our list.

18          THE COURT: And provide it on a rolling basis  
19 beginning prior to the end of four weeks?

20          MS. LOZANO: Correct, correct, yes.

21          THE COURT: Mr. Devlin-Brown, that seem reasonable?

22          MR. DEVLIN-BROWN: Yes, your Honor.

23          THE COURT: OK. Then what else do we need to do  
24 today, Ms. Lozano?

25          MS. LOZANO: Your Honor, I would like a little bit

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1 more clarity about the home detention, electronic monitoring.

2 Since Mr. Scott has at least -- there are three Cape Cod homes  
3 and one in Florida. I'm not exactly sure what the Court  
4 envisions in terms of home detention. In what home?

5 THE COURT: That's a good question.

6 Mr. Devlin-Brown.

7 MR. DEVLIN-BROWN: I think we would have to work with  
8 pretrial and then come back to the Court if there are any  
9 issues, but I think if the Court orders that, it would at least  
10 allow pretrial, hopefully, if he needs to visit Massachusetts,  
11 to try to work out arrangements for that.

12 THE COURT: I guess the issue would be I don't want to  
13 break pretrial's bank, and we don't want them shuttling back  
14 and forth on a weekly basis between Florida and Massachusetts.  
15 So maybe he can pick one, and if he needs to travel on a  
16 one-off basis, you can come to the Court for permission.

17 MR. DEVLIN-BROWN: Yeah, I think the goal would be  
18 Florida. We're working on figuring out, making sure his wife  
19 can come there, or it might be a more complicated question, but  
20 mostly in Florida.

21 THE COURT: OK.

22 MS. LOZANO: So, just to be clear, it will be Florida  
23 home detention, and if he intends to travel to Cape Cod, the  
24 parties will communicate with the Court?

25 THE COURT: Correct. Should come to court and ask me

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1 in the first instance.

2 MR. DEVLIN-BROWN: That's fine.

3 MS. LOZANO: Thank you.

4 With respect to the travel documents, just to be  
5 clear, he also cannot apply for any new travel documents?

6 THE COURT: That's correct, yes.

7 MS. LOZANO: Yes. Thank you.

8 I think the only remaining item is, your Honor, the  
9 government requests that this time be excludable from --

10 THE COURT: Well, when do you folks think it makes  
11 sense to come back? Mr. Devlin-Brown won't have the initial  
12 wave of discovery until four weeks out. So maybe a week or two  
13 beyond that, Mr. Devlin-Brown?

14 MR. DEVLIN-BROWN: That would be fine, your Honor.  
15 The Court can rule on whatever basis to exclude time that it  
16 issues. I don't think we're prepared to consent while he's  
17 still incarcerated, until we can figure out if he is able to  
18 make this bond, but we'll be happy to come back.

19 THE COURT: Let's get a date five weeks out.

20 THE DEPUTY CLERK: November 1, 3:30 p.m.

21 MR. DEVLIN-BROWN: That's fine, your Honor.

22 MS. LOZANO: That's fine for the government, your  
23 Honor.

24 THE COURT: OK.

25 MS. LOZANO: We request that the time be excludable

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1 between now and November 1 based on the fact that we will be  
2 producing materials and that it will give counsel time to  
3 review those materials and determine motions that he may want  
4 to make. It will also serve to allow the parties to discuss  
5 any potential resolution, if there is one.

6 THE COURT: The time between now and November 1 will  
7 be excluded for the reasons set forth on the record by  
8 Ms. Lozano and also to allow Mr. Scott to finalize his  
9 situation with respect to counsel. As I understand, it is  
10 still an open issue. I find that excluding that time will be  
11 in the best interest of Mr. Scott.

12 And unless there's anything else that we need to do  
13 today, Ms. Lozano?

14 MS. LOZANO: No, your Honor. Thank you.

15 THE COURT: Mr. Devlin-Brown?

16 MR. DEVLIN-BROWN: No, your Honor.

17 THE COURT: We're adjourned. Thank you, folks.

18 (Adjourned)

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